A

PP

v.

GUNASEKARAN ARJUNAN & ANOR

B

HIGH COURT MALAYA, SHAH ALAM
KN SEGARA J
[CRIMINAL TRIAL NO: 45-39-2003]
21 JULY 2006

C ***CRIMINAL PROCEDURE:*** *Sentence - Maximum sentence - Principles - Culpable homicide not amounting to murder - Killing premeditated and unprovoked - Whether calling for maximum sentence - Penal Code, s. 304(a)*

D ***CRIMINAL PROCEDURE:*** *Sentence - Guilty plea - Effect - Whether would take away court's discretion to impose maximum sentence - Whether discretion remained*

The two accused had pleaded guilty to a charge of culpable homicide not amounting to murder under s. 304(a) of the Penal
E Code. The facts showed that, following an argument, the accused had lured the deceased to a secluded spot in Jalan Tanjung Bandar Utama, Damansara upon the pretext of settling their dispute. There, the 2nd accused took out a knife and repeatedly stabbed the deceased until the latter succumbed to his fate. The
F evidence further showed that the deceased had suffered some 21 stab-wounds, most of which had penetrated his abdominal cavities and punctured his liver and lungs. Before the learned judge, the sole issue that arose was whether, notwithstanding the guilty plea herein, the facts had called upon, and warranted the court to
G impose the maximum sentence provided by the law.

Held (imposing maximum sentence on both accused):

H **(1)** The facts clearly showed that both the accused had intended to cause death. The deceased was helpless and was not able to put up any defence to the vicious repeated stabs with the knife. The deceased could not even run for his life because he was firmly restrained by the 1st accused. (para 7)

I **(2)** The attack was clearly a premeditated attack. There was also no provocation or retaliation from the deceased, right from the time the 1st and 2nd accused met up with the deceased at a

food outlet for drinks till the time the 2nd accused lured the deceased on a motorcycle, together with the 1st accused, to the deserted spot. (para 8)

(3) A plea of guilty does not take away the discretion of the court to impose the maximum sentence provided by the law. Public interest is paramount and violent crimes affecting the human body and resulting in death, committed with a degree of premeditation, without any cause by the deceased to have such a fate falling upon him, must be met with the severest of punishment provided by the law. (para 9)

(4) The word "discount" in relation to sentences upon a plea of guilty should not be used indiscriminately. It should not give the impression that the accused can "bargain" over his sentence just as one bargains at a market place. Likewise, the threat of inconvenience to the court by a prolonged trial and expense, in the event that the court does not pass a particular sentence or a sentence lesser than the maximum, upon a plea of guilty, should not prevail. (para 10)

(5) The 1st and 2nd accused's respective plea for leniency is without merits. Both are sentenced to 20 years' imprisonment from the date of arrest. (para 11)

Legislation referred to:
Penal Code, ss. 34, 302, 304(a)

For the OKT1 - G Ramachandran; M/s G Ram & Assoc
For the OKT2 - Ghazali Taib; M/s Jihan Ghazali & Co
For the prosecution - Wan Shaharuddin Wan Ladin DPP

Reported by WA Sharif

JUDGMENT

KN Segara J:

[1] The 1st accused and 2nd accused were originally charged for the offence of murder under s. 302 Penal Code read together with s. 34 of the said Code, in causing the death of one Balu a/l Subramaniam on 20 January 2003 between 4pm and 6pm (see exh. P2). Both the accused claimed trial to the said charge.

A However, subsequently, the prosecution tendered an alternative charge under s. 304(a) Penal Code, and both the accused pleaded guilty to the said charge (see exh. P3).

[2] Both the accused were represented by counsel. The accused B understood the nature and consequences of their plea of guilty to the alternative charge. They maintained their plea of guilty even after the court explained to them that the court could impose the maximum sentence of 20 years imprisonment, notwithstanding their plea of guilty if the facts so warranted, in the event the court was C satisfied that there were no mitigating factors sufficient to warrant anything less than the maximum sentence for the offence.

[3] The facts tendered by the learned DPP were as follows (see exh. P4):

D Pada jam lebihkurang 1.30 petang 20 Januari 2003, OKT1, OKT2 dan Balu a/l Subramaniam (selepas ini dirujuk sebagai "SI MATI") telah pergi minum arak bersama-sama di sebuah kedai makan di Kampung Sungai Ara, Damansara. Sambil minum mereka telah berbual-bual.

E Pada jam 3.00 petang, OKT2 telah bertengkar dengan si mati. OKT2 telah menjadi begitu marah dengan si mati dan telah balik ke rumah OKT2. Di rumahnya OKT2 telah mengambil sebilah pisau untuk mencederakan si mati. OKT2 kemudiannya telah menyelitkan pisau tersebut dicelah pinggang beliau.

F OKT2 kemudiannya telah pergi semula ke kedai tersebut. Si mati dan OKT1 masih berada di sana ketika OKT2 sampai di situ. OKT2 telah mengajak si mati menaiki motosikal dengan alasan kononnya ingin berbincang pasal pertengkaran tadi. OKT1, OKT2 dan si mati telah menaiki satu motosikal bersama-sama. Motosikal G telah dipandu oleh OKT2 dan menuju ke sebuah kawasan semak berhampiran Kilang Sony di Jalan Tanjung Bandar Utama, Damansara, Petaling Jaya (selepas ini dirujuk sebagai "TEMPAT KEJADIAN"). Mereka telah sampai di kawasan itu pada jam 4.00 petang dan keadaan tempat itu agak sunyi.

H Apabila sampai di tempat kejadian OKT2 telah memberhentikan motosikalnya. OKT2 terus menumbuk muka si mati dan OKT2 telah mengarahkan OKT1 untuk memegang si mati. OKT1 kemudiannya telah memegang si mati dan OKT2 telah mengeluarkan pisau yang dibawanya sebelum ini terus menikam si I mati bertubi-tubi dari depan. Si mati terus rebah dengan badannya berlumuran darah.

Kemudian OKT1 dan OKT2 telah membuangkan si mati ke dalam kawasan belukar. Mereka kemudiannya telah beredar dari tempat kejadian.

Pada jam 2.45 pagi 21 Januari 2003, anggota di Balai Polis Damansara telah menerima panggilan telefon dari orang awam mengenai penemuan satu mayat di tempat kejadian.

Pihak polis telah pergi ke tempat kejadian dan telah menemui mayat si mati. Mayat si mati telah dibawa ke hospital. Mayat si mati telah dicamkan oleh isterinya bernama Amirtham a/p Veerasamy.

Bedah siasat telah dijalankan dan si mati telah disahkan mati akibat kesan tikaman berganda. Pemeriksaan juga mendapati 21 kesan tikaman yang mana konsisten dengan tikaman oleh sebilah pisau. Diantara tikaman tersebut telah menembusi hati, perut, paru-paru dan dada si mati. OKT1 telah ditangkap pada jam 5.00 pagi 21 Januari 2003 di rumahnya. OKT2 telah ditangkap pada jam 5.20 pagi 21 Januari 2003 di rumahnya dan setelah soal-siasat pihak polis telah menemui sebilah pisau yang mempunyai kesan darah.

Pisau tersebut telah dihantar ke Jabatan Kimia Malaysia dan telah disahkan oleh ahli Kimia mempunyai kesan darah manusia. Darah tersebut juga mempunyai profil DNA yang sama dengan profil DNA darah si mati.

Sebab kematian si mati telah disahkan akibat multiple stab wounds.

[4] Both the accused admitted the facts that were read and explained to them. The learned DPP also tendered the chemist report, the post-mortem report and the knife that was used to stab the deceased. Both the accused admitted the said exhibits.

[5] The court was entirely satisfied, on the facts tendered to the court, that both the accused were guilty of the alternative charge, and were accordingly convicted on the alternative charge, on their own plea of guilty.

[6] After considering the plea in mitigation by the respective counsel for the 1st and 2nd accused, and the submission of the learned DPP on sentence, the court sentenced both the accused to the maximum sentence of 20 years imprisonment from the date of arrest (21 January 2003).

[7] The facts of the case clearly show that both the accused intended to cause the death of the deceased, Balu a/l Subramaniam. The deceased was helpless and was not able to put up any defence to the vicious repeated stabs with the knife, exh. P7, by the 2nd accused. The deceased could not even run for his life because he was firmly restrained by the 1st accused. The post-mortem report, exh. P6, shows that there were 21 stab wounds. They were all incised stab wounds and most of the stab wounds were found penetrating into the chest and abdominal cavities. No defence wounds were found. The cause of death was the multiple stab wounds.

[8] The facts of the case further reveal that the attack on the deceased was a premeditated attack by the 2nd accused. Although the 1st accused may not have planned the attack on the deceased, the facts show that the role played by him in holding the deceased firmly, to enable the 2nd accused to carry out his pre-planned dastardly attack that was totally disproportionate to any cause for vengeance on the deceased, places equal responsibility on the shoulders of the 1st accused for the death of the deceased. The 1st accused did nothing to ensure that the 2nd accused did not stab the deceased with the knife, after the 2nd accused had first punched the deceased's face, before launching his attack with the knife he had brought along with him, concealed at his waist, obviously for the specific purpose of stabbing the deceased to death. The facts show that there was no provocation or retaliation from the deceased right from the time the 1st and 2nd accused had met up with the deceased at a food outlet for drinks and till the time the 2nd accused lured the deceased on his motorcycle, together with the 1st accused, to a deserted spot of undergrowth near a electronic factory (Kilang SONY) at Jalan Tanjung Bandar Utama, Damansara, Petaling Jaya.

[9] A plea of guilty does not automatically take away the discretion of any court to impose the maximum sentence provided for the said offence under the law. Accused and counsel should not delude themselves into thinking that a plea of guilty entitles an offender, a legal right to a sentence lesser than the maximum. Public interest is paramount and violent crimes affecting the human body resulting in death committed with a degree of premeditation, without any cause by the deceased to have such a fate fall upon him, must be met with the severest punishment provided by the law.

[10] The Courts of Justice are not market places. The word "discount", in relation to sentences, upon a plea of guilty, should not be used indiscriminately, as it gives the impression that the accused can "bargain" over his sentence, as one bargains over a price at a market place. The threat of inconvenience to the court by a prolonged trial and expense, in the event the court does not accede to pass a particular sentence or a sentence lesser than the maximum, upon a plea of guilty, should never prevail. The appropriate sentence in every case, whether the accused has pleaded guilty or otherwise, must be determined entirely on the peculiar facts of the case, after taking into consideration public interest, as paramount, at all times, bearing in mind current needs and demands of State, society, and individuals for realistic punishment and rehabilitation of offenders who have no respect for the law or human life.

[11] The 1st and 2nd accused's respective plea for leniency is without merits. The fact the accused have aged parents and families to support, with responsibilities to shoulder, is not a mitigating factor for a crime of violence resulting in death. The accused ought to have been fully aware of the consequences of their acts when they committed the offence. The accused should consider themselves lucky that they have been spared the gallows by the prosecution offering the alternative charge. Both the accused are sentenced to 20 years imprisonment from the date of their arrest.